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Chapter Twelve

Sole Source Professional Services

The procedures in this Chapter apply to acquisition of outside services when it is determined that only one source is available to perform the professional services required.

12.1 DEFINITION AND PURPOSE

The Delaware Code, Title 29, Chapter 69, Subchapter V, Section 6985 states '*A contract may be awarded for Professional Service without competition, if the Agency Head, prior to procurement, determines that there is only one source for the required professional service.*'

This Administrative Procedure waives certain portions of Subchapter V. of the State Procurement Act. In essence, it allows a Director to select and negotiate a fee with a single consultant. The advertising, the shortlisting, and the selection processes may all be eliminated, if so desired by the initiating Director.

To procure services under this Section, a Director must provide, for the Secretary's approval, sufficient evidence and written documentation that there is only one source and that no other type of professional service is available that will satisfy the requirements of the work to be undertaken. The documentation is to include the specific efforts made to determine the availability of any other source.

The Statue further requires the Department to examine the cost and pricing data prior to award of the contract.

For consistent project management, the portions of DelDOT's Consultant Procurement and Admin-

istrative Procedures process outlined in Section 12.2 apply to these types of contracts. More detailed information on the various requirements can be found in other chapters of the Manual.

12.2 PROCUREMENT AND ADMINISTRATIVE PROCEDURES

At the discretion of an initiating Director, the standard procedure outlined in this section may be modified. However, if the changes are significant, the revised procedure should be approved by the Consultant Policy Committee to maintain the integrity of the Department's procurement process.

A Section, through its Director, may submit another procedure that it believes will result in selecting the best qualified firm to perform the services. To reduce the chance of violating the intent of the Code or Department policy, the Section should work closely with the Consultant Control Coordinator who can assist with the determining if there is a need to obtain approval of the changes by the Consultant Policy Committee.

The request to modify the procedure is processed through the Consultant Control Coordinator's Office. To save time and/or re-submittal, the authorization request must be complete, and at least briefly cover the items outlined in Section 12.2, with any proposed deletions, modifications or additions. The Consultant Control Coordinator does not have the authority to process requests that do not outline the complete procedure to be followed.

Delaware Code cautions all Agency's to avoid

this method of procuring professional services, except when no reasonable alternative sources exist. Any occasion involving entering into a contract using public funds without competition is cause for increased documentation and vigilant contract administration. The following procedure is recommended.

- Obtain an Approved Project Initiation.
- Determine need for outside services.
- Assign a Project Manager.
- Prepare a project description and scope of work.
- Prepare a description of the procedure to be followed in procuring the service and administering the contract.
- Obtain the Secretary's approval.
- Request an agreement number.
- Determine and document there is no other available source to perform the service.
- Request authorization and approval by the Secretary to use this procedure, documentation citing the specific efforts made and the existence of a sole source condition must be included..
- Hold a pre-proposal conference.
- Request and review the fee proposal.
- Request pre-award audit, if over \$100,000,00.
- Obtain approval of any sponsoring agency,
- Negotiate a reasonable fee.
- Prepare a final draft agreement.
- Obtain Approval As-To-Form.
- Obtain Approval As-To-Process.

- Execute the final agreement.
- Issue the notice to proceed.
- Obtain final funding approval.
- Distribute copies of the final agreement.
- Monitor the work in progress.
- Prepare performance evaluations.
- Notify the Office of Financial Management and Budget when the work has been completed.
- Request final audit.
- Contract closeout.

12.2.1 PROJECT INITIATION

The Office of Financial Management and Budget initiates projects. This Office is responsible for developing and maintaining the Department's program goals, project work scopes, project estimates, funding availability, scheduling, and priorities. As projects are assigned, each responsible section must make the determination if outside professional services are required to meet the project's needs.

A project must be initiated before the procurement process can begin. An approved Combined Project Initiation and Project Number Request Form (See Figure 1-1) assures that the intended work is in a Department-approved program, that a project number has been issued, and that funding is available.

12.2.2 PROJECT MANAGER ASSIGNMENT

Upon receipt of the approved Project Initiation Form, the Director—working with the appropriate Section or Office head—formally assigns a staff member to be Project Manager/contract administrator. This person is responsible and accountable for satisfactory completion of the project.

12.2.3 SCOPE OF WORK AND SCOPE OF SERVICES

Before a firm(s) is contacted to perform the work, the Project Manager should prepare a detailed scope of services. Projects performed under this provision of the State Law are limited to those which are fully documented as having only one firm that is qualified to perform the services. This will be difficult to do without a good Scope of Work and Scope of Services.

12.2.4 DETERMINATION OF NEED FOR OUTSIDE SERVICES

The Project Manager needs to prepare adequate documentation that there exists a condition requiring procuring outside services under this provision. The initial evaluation should consider the following:

- Developing a project description and detailed Scope of Services.
- Making a preliminary cost estimate for services and cost of project.
- Identifying the most critical features.
- Identifying any special or specific criteria.
- Identifying any special standards to be followed.
- Identifying any known unusual problems, either technical or otherwise.
- Identifying those tasks that may be given to a subconsultant.

12.2.5 APPROVAL REQUEST LETTER

Using the information developed, the Project Manager prepares a formal request for the Secretary's approval to use outside services. See Figure 1-2 as a guide for the type of information that should be included in this request. As part of this request, the Secretary should be advised that the Section anticipates that only one firm is qualified to perform the services.

12.2.6 SECRETARY'S APPROVAL

The Secretary's approval to utilize an outside firm

must be obtained before proceeding with the procurement process.

12.2.7 AGREEMENT NUMBER

After receiving the Secretary's approval, the Project Manager must request an agreement number from the Consultant Control Coordinator. The Project Manager forwards a copy of the Secretary's approval letter with the request.

12.2.8 Sole Source Determination

A Section now has funding approval and authorization to begin the process to determine the availability of firms to perform the required services. The Section must determine the process to be followed. The goal is to obtain sufficient documentation that the section can present in writing, for approval by the Secretary, the efforts made and that the conditions required under Section 6907, do exist to permit procuring services under this provision.

12.2.9 Sole Source Procurement Approval

The Section requests the Secretary to approve Sole Source Procurement using the documentation gathered in Section 12.2.8 as backup data.

12.3 PROPOSAL INITIATION

After receiving the Secretary's approval, a Section may contact the selected firm and begin the negotiation process. Because of the lack of competition, the following sections describe a process that will help ensure a successful contract meeting the Statute's goal of having quality, cost-effective contracts.

12.3.1 CONTACT WITH CONSULTANT

The Project Manager should prepare an outline of contractual limitations, instructions on how the fee is to be derived, and a preliminary draft agreement before contacting the firm. Proposal development and fee negotiation will proceed much easier and more quickly if this preparation is made.

A pre-proposal conference may not be necessary or practical for some projects. However, in addition to the Scope of Work and Scope of Services, all of the following items should

be thoroughly discussed with the selected firm. Based upon this discussion, the firm will be able to prepare a fee proposal in an acceptable format and at a fair price.

12.3.2 PROPOSAL REQUIREMENTS

12.3.2.1 Financial Portion

The Project Manager must have a clear understanding of what financial items are needed to develop a Sole Source Service contract. This portion of the meeting is the most critical in reaching an acceptable proposal on the first submission.

The Consultant should be requested to present a fee derivation in a format similar to that required in Chapter 4. Backup information to justify the fee should be included. Monitoring and evaluation will be difficult without a good initial project work scope and fee derivation. The basic elements used to develop the proposal should include:

- direct technical salaries,
- direct salary costs (payroll burden),
- indirect salary costs (administrative overhead),
- direct non-salary costs,
- fixed fee (profit), and
- total compensation.

The Department usually combines the direct salary and indirect salary costs into a single percentage called overhead.

Refer to Chapter Four for a detailed description of each of these terms.

At the meeting, the Project Manager should discuss any cost limitations that may be in effect.

Contracts negotiated under this Chapter are more carefully scrutinized to ensure a reasonable price, increasing the need for complete fee negotiation documentation. To provide this data and to adequately monitor and provide sound fiscal control, it may not be prudent to deviate far from

the standards in Chapter Four.

12.3.2.2 Administrative Portion

The Project Manager should discuss the administrative procedures to be followed on the contract with the Consultant. Items to be discussed include:

- the cost proposal format and contents,
- the fee negotiation process,
- the agreement process,
- interim project reviews,
- key milestones with expected completed work products,
- the project work schedule form and content,
- the supplemental agreement process,
- the performance monitoring process,
- the performance evaluation process, and
- the payment procedure.

12.4 PROPOSAL

12.4.1 COST PROPOSAL CONTENTS

A typical proposal should include the following items:

- a detailed scope of services,
- a complete fee derivation with a summary of total estimated direct labor work hours by class, associated overhead costs, direct costs and the maximum amount payable, and
- a proposed progress schedule in a form as directed by the Project Manager.

After the pre-proposal meeting is held, the Consultant is instructed to prepare the fee proposal.

12.4.2 TECHNICAL REVIEW

Upon receiving the fee proposal, the Project Manager performs a technical review and negotiation.

The procedure for reaching agreement on a fee proposal for projects performed under this provision is similar to that for larger projects. The proposal is reviewed technically to determine the following:

- Are all the items of work adequately covered?
- Are there any significant differences between the Department's estimate to perform the work and that submitted?
- Is the proposal reasonable, and does it indicate adequate understanding of the work required?
- Does the work schedule agree with the needs of the Department?
- Are the work tasks properly coordinated with the Department and other necessary agencies or groups?
- Is there a demonstrated ability to adequately manage the project production and to control costs and quality?

12.4.3 NEGOTIATION

Negotiation takes place when the project manager believes any of the items in the proposal are not reasonable or in conformance with instructions given at the pre-proposal meeting.

The end result is a better mutual understanding of what is to be done, by whom, when it is to be done, and what it will cost. All of this is documented by the submission of a revised proposal by the

Consultant reflecting this understanding.

12.5 FINAL DRAFT AGREEMENT

After completion of successful negotiations, the Project Manager prepares the final draft

agreement based on the revised proposal.

12.5.1 APPROVAL AS-TO-FORM

The Project Manager submits four copies of the final agreement to the Deputy Attorney General for Approval As-To-Form.

12.5.2 APPROVAL AS-TO-PROCESS

The Project Manager submits the Approved As-To-Form agreement to the Consultant Control Coordinator for Approval As-To-Process.

12.5.3 AGREEMENT EXECUTION

The Project Manager sends the final approved copies to the Consultant for signature, normally four copies (five copies if jointly sponsored). After receiving the signed copies of the agreement, the Project Manager obtains the appropriate Director's signature and then requests the Director of Administration to officially execute the agreement on behalf of the Department. The submission includes a completed Agreement Transfer Form, shown in Figure 5-1. The Director of Administration signs, dates and affixes the Department's seal to the agreements. This date is the recognized official date of the contract.

12.5.4 FUNDING APPROVAL

Two originals and one copy of the final executed Consultant Information Form (See Figure 5-2) are forwarded to the Office of Financial Management and Budget for funding approval. At least one of the original agreements must have a copy of the Consultant's current Delaware Business License attached. This copy is forwarded to the Finance Office and used in the payment process.

12.5.5 NOTICE TO PROCEED

The Project Manager issues a formal Notice to Proceed to the Consultant. Included with the

Notice to Proceed is an originally executed copy of the final agreement.

The Project Manager receives an approved Project Authorization and Funding Form FS-1 with

a note to issue the Notice to Proceed.

For consistency and good contract management, this type of project should have a formal final closeout, similar to larger projects but much less detailed, see Section 6.4.

12.5.6 DISTRIBUTION OF EXECUTED AGREEMENTS

Each of the following receive one of the four original executed agreements:

- the Office of Financial Management and Budget,
- the Finance Office,
- the Consultant, and
- the initiating section's files for use of that section's Fiscal Officer.

If the project is jointly sponsored, the fifth original is sent to the appropriate agency by the Office of Financial Management and Budget.

A copy of the final agreement must also be sent to the Consultant Control Coordinator. This Office is responsible for tracking all agreements, including any supplemental agreements, reporting professional service activity monthly to the Consultant Policy Committee.

12.6 MONITORING WORK

Projects performed under this procedure should be carefully monitored. In fact, because of the unusual nature of these contracts very close monitoring may be even more critical, refer to Chapters Six and Seven.

12.7 PERFORMANCE EVALUATION

A final evaluation is required. Refer to Appendix J for the forms and instructions.

12.8 FINAL AUDIT

The Department's policy is that a final audit be requested by the Project Manager on all outside service contracts.

12.9 CONTRACT CLOSEOUT